

Docket No.: B2745.0025/P0025

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Heidi Kay et al.

Application No.: 09/216,206

Confirmation No.: 1079

Filed: December 18, 1998

Group Art Unit: 3622

For: INTERNET ADVETISING SYSTEM

Examiner: James W. Myhre

**STATEMENT OF FACT IN SUPPORT OF REQUEST FOR  
RECONSIDERATION OF PETITIONS UNDER 37 CFR §§ 1.183 AND 1.48**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The undersigned, Benzion A. Wachsman, hereby submits the following Statement of Facts in Support of Request for Reconsideration of Petitions under 37 CFR §§ 1.48 and 1.183.

I am a principal of BEH Investments LLC, the current assignee for the above-identified application. I have first-hand knowledge of the information recited herein.

On September 22, 2004, petitions requesting correction of the inventorship pursuant to 37 CFR § 1.48, were filed in the present application. Contemporarily, petitions under 37 CFR § 1.183 were filed, requesting waiver of the requirements of §§ 1.48, 1.63 and 1.67.

The requirements requested to be waived were a "Statement" by the inventors being added as required by § 1.48, and a "Declaration" by the actual inventors as required by §§ 1.63 and 1.67.

08/03/2005 SDENB0B1 00000011 09216206

03 FC:1464  
04 FC:1999

130.00 OP  
130.00 OP

The two inventors being added are the only actual inventors, and are as follows:

- 1) David William Roth
- 2) Dylan Fyall Salisbury

Mr. Salisbury has been successfully reached, and has executed the Statement and Declaration that are being submitted herewith.

Mr. David W. Roth, however, cannot be found or reached after diligent effort. My efforts in attempting to reach Mr. Roth included a comprehensive search on the web for current information on Mr. Roth, as well as searches in several publicly available databases. After diligent efforts, current contact information for Mr. Roth could not be found.

I submitted a search query for Mr. Roth to two web-based services that claim to have information on individuals from billions of public records. The two services are "USA People Search" and "Intelius". The results of Intelius are inclusive and cumulative to the results of USA People Search. Attached hereto as Exhibit A is a printout of the search results obtained from USA People Search, listing five addresses for Mr. Roth. It should be noted that the addresses aren't necessarily current, but may in fact be outdated for many years.

On February 22, 2005, five letters attached hereto as Exhibits B through F were mailed to the five addresses for Mr. Roth via U. S. Postal Service Certified Mail. Attached hereto as Exhibit G, are five receipts for the five certified mailings. The five addresses are as follows:

- 1) 3981 Page Mill Road, Los Altos, CA 94022
- 2) 17078 Creekside Circle, Morgan Hill, CA 95037
- 3) 500 West Middlefield Road, Mountain View, CA 94043
- 4) 3650 Fillmore Street Suite 304, San Francisco, CA 94123
- 5) 1262 Henderson Avenue, Sunnyvale, CA 94086

None of the mailed letters were received by Mr. Roth at any of the above addresses. Attached hereto as Exhibits H through L is tracking information obtained from the USPS website for each of the certified mailings.

With respect to the Los Altos address, the letter was unclaimed and/or refused. See Exhibit H. Additionally, the owner of the Los Altos address, Mr. Richard Geiger, confirmed that Mr. Roth does not currently reside at that address, nor can he recall him ever residing there.

With respect to the Morgan Hill address, the letter was undeliverable at that address. See Exhibit I. The returned envelope shown in Exhibit M is stamped "Forwarding Order Expired".

With respect to the Mountain View address, the letter was undeliverable as addressed. See Exhibit J.

With respect to the San Francisco address, the letter was unclaimed. See Exhibit K. In addition a complaint was filed on September 17, 2004 in the Superior Court of San Francisco for an unlawful detainer by Mr. Roth of the San Francisco premises. See Exhibit N. A default judgment was entered in that case. This clearly suggests that Mr. Roth does not currently reside there.

With respect to the Sunnyvale address, the letter was undeliverable. See Exhibit L. Exhibit M is a copy of the returned envelope.

In view of the above facts, I respectfully assert that Mr. Roth cannot be found or reached after diligent efforts.

Dated: July 26, 2005

Respectfully submitted,

By: /Benzion A. Wachsman/

Benzion A. Wachsman  
BEH Investments LLC  
Tel. (718) 928-2213

# EXHIBITS

**USA People Search**You can refine your  
David W Roth**Exhibit A**

California



Search

[My Account](#)**People Search**

Your purchase was successful. You can view your purchases anytime from your account manager.

Name	Address	City	State	Zip	Age	Birth Date	Phone
1. <u>ROTH, DAVID W</u>	3981 PAGE MILL RD	LOS ALTOS	CA	94022	47	12/23/1957	
2. <u>ROTH, DAVID W</u>	17078 CREEKSIDE CIR	MORGAN HILL	CA	95037	47	12/23/1957	
3. <u>ROTH, DAVID W</u>	17078 CREEKSIDE CIR	MORGAN HILL	CA	95037	47	12/23/1957	
4. ROTH, DAVID W	500 W MIDDLEFIELD RD	MOUNTAIN VIEW	CA	94043	47	12/23/1957	
5. ROTH, DAVID W	3650 FILLMORE ST	SAN FRANCISCO	CA	94123	47	12/23/1957	
6. <u>ROTH, DAVID W</u>	1262 HENDERSON AVE	SUNNYVALE	CA	94086	47	12/23/1957	

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©2005 USA People Search

# Exhibit B

**Benzion A. Wachsman**

President

**BEH Investments LLC**

1652 48<sup>th</sup> Street

Brooklyn, NY 11204

Tel: (718) 928-2213

Fax: (718) 504-9671

February 22, 2005

Mr. David W. Roth  
3981 Page Mill Road  
Los Altos, CA 94022

CONFIDENTIAL COMMUINCATION

Re: U.S. Patent Application No.: 09/216,206,  
Title: Internet Advertising System

Dear Mr. Roth,

I am writing to you on behalf of BEH Investments LLC, the current assignee for the above-identified U.S. patent application ('206 application). The '206 application has recently been amended in an attempt to claim priority to U.S. Patent No. 6,285,987 ('987 Patent), which is also assigned to BEH Investments. The '987 Patent names you and Mr. Dylan Salisbury as joint inventors. The '206 Application was amended to include new claims for inventions disclosed in the '987 Patent. As such, you and Mr. Salisbury are now considered inventors to the '206 Application. To this end, in order to effectuate the amendment, we require a signed Declaration and Statement from all the named inventors.

I would very much appreciate if you can contact me at the number listed above in order to arrange for the signing of the required documents. We understand that your cooperation may involve time and effort on your part and are willing to compensate you accordingly.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

*Benzion Wachsman*

Benzion A. Wachsman

# Exhibit C

**Benzion A. Wachsman**

President

**BEH Investments LLC**

1652 48<sup>th</sup> Street

Brooklyn, NY 11204

Tel: (718) 928-2213

Fax: (718) 504-9671

February 22, 2005

Mr. David W. Roth  
17078 Creekside Circle  
Morgan Hill, CA 95037

**CONFIDENTIAL COMMUNICATION**

Re:           U. S. Patent Application No.: 09/216,206,  
                 Title: Internet Advertising System

Dear Mr. Roth,

I am writing to you on behalf of BEH Investments LLC, the current assignee for the above-identified U.S. patent application ('206 application). The '206 application has recently been amended in an attempt to claim priority to U.S. Patent No. 6,285,987 ('987 Patent), which is also assigned to BEH Investments. The '987 Patent names you and Mr. Dylan Salisbury as joint inventors. The '206 Application was amended to include new claims for inventions disclosed in the '987 Patent. As such, you and Mr. Salisbury are now considered inventors to the '206 Application. To this end, in order to effectuate the amendment, we require a signed Declaration and Statement from all the named inventors.

I would very much appreciate if you can contact me at the number listed above in order to arrange for the signing of the required documents. We understand that your cooperation may involve time and effort on your part and are willing to compensate you accordingly.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

*Benzion Wachsman*

Benzion A. Wachsman

## Exhibit D

**Benzion A. Wachsman**

President

**BEH Investments LLC**

1652 48<sup>th</sup> Street

Brooklyn, NY 11204

Tel: (718) 928-2213

Fax: (718) 504-9671

February 22, 2005

Mr. David W. Roth  
500 West Middlefield Road  
Mountain View, CA 94043

CONFIDENTIAL COMMUNICATION

Re:           U. S. Patent Application No.: 09/216,206,  
Title: Internet Advertising System

Dear Mr. Roth,

I am writing to you on behalf of BEH Investments LLC, the current assignee for the above-identified U.S. patent application ('206 application). The '206 application has recently been amended in an attempt to claim priority to U.S. Patent No. 6,285,987 ('987 Patent), which is also assigned to BEH Investments. The '987 Patent names you and Mr. Dylan Salisbury as joint inventors. The '206 Application was amended to include new claims for inventions disclosed in the '987 Patent. As such, you and Mr. Salisbury are now considered inventors to the '206 Application. To this end, in order to effectuate the amendment, we require a signed Declaration and Statement from all the named inventors.

I would very much appreciate if you can contact me at the number listed above in order to arrange for the signing of the required documents. We understand that your cooperation may involve time and effort on your part and are willing to compensate you accordingly.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

*Benzion Wachsman*

Benzion A. Wachsman

# Exhibit E

**Benzion A. Wachsman**

President

**BEH Investments LLC**

1652 48<sup>th</sup> Street

Brooklyn, NY 11204

Tel: (718) 928-2213

Fax: (718) 504-9671

February 22, 2005

Mr. David W. Roth  
3650 Fillmore Street - Apt. # 314  
San Francisco, CA 94123

CONFIDENTIAL COMMUNICATION

Re:           U. S. Patent Application No.: 09/216,206,  
Title: Internet Advertising System

Dear Mr. Roth,

I am writing to you on behalf of BEH Investments LLC, the current assignee for the above-identified U.S. patent application ('206 application). The '206 application has recently been amended in an attempt to claim priority to U.S. Patent No. 6,285,987 ('987 Patent), which is also assigned to BEH Investments. The '987 Patent names you and Mr. Dylan Salisbury as joint inventors. The '206 Application was amended to include new claims for inventions disclosed in the '987 Patent. As such, you and Mr. Salisbury are now considered inventors to the '206 Application. To this end, in order to effectuate the amendment, we require a signed Declaration and Statement from all the named inventors.

I would very much appreciate if you can contact me at the number listed above in order to arrange for the signing of the required documents. We understand that your cooperation may involve time and effort on your part and are willing to compensate you accordingly.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

*Benzion Wachsman*

Benzion A. Wachsman

# Exhibit F

**Benzion A. Wachsman**

President

**BEH Investments LLC**

1652 48<sup>th</sup> Street

Brooklyn, NY 11204

Tel: (718) 928-2213

Fax: (718) 504-9671

February 22, 2005

Mr. David W. Roth  
1262 Henderson Avenue  
Sunnyvale, CA 94086

CONFIDENTIAL COMMUINCATION

Re: U. S. Patent Application No.: 09/216,206,  
Title: Internet Advertising System

Dear Mr. Roth,

I am writing to you on behalf of BEH Investments LLC, the current assignee for the above-identified U.S. patent application ('206 application). The '206 application has recently been amended in an attempt to claim priority to U.S. Patent No. 6,285,987 ('987 Patent), which is also assigned to BEH Investments. The '987 Patent names you and Mr. Dylan Salisbury as joint inventors. The '206 Application was amended to include new claims for inventions disclosed in the '987 Patent. As such, you and Mr. Salisbury are now considered inventors to the '206 Application. To this end, in order to effectuate the amendment, we require a signed Declaration and Statement from all the named inventors.

I would very much appreciate if you can contact me at the number listed above in order to arrange for the signing of the required documents. We understand that your cooperation may involve time and effort on your part and are willing to compensate you accordingly.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

*Benzion Wachsman*

Benzion A. Wachsman

# Exhibit G

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
CERTIFIED MAIL USE	
UNIT ID: 0339	UNIT ID: 0339
Postage \$ 0.37	Postage \$ 0.37
Certified Fee 2.70	Certified Fee 2.70
Return Receipt Fee (Endorsement Required) 1.75	Return Receipt Fee (Endorsement Required) 1.75
Postmark Here	Postmark Here
Clerk: KX0X4	Clerk: KX0X4
Total Postage & Fees \$ 4.42	
02/22/05 02/22/05	
Send To: Street, Apt. No. 3991 Page mill Rd. or PO Box No. 22 City, State, Zip 49422 See Reverse for Instructions	
PS Form 3800, June 2002	

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
CERTIFIED MAIL USE	
UNIT ID: 0339	UNIT ID: 0339
Postage \$ 0.37	Postage \$ 0.37
Certified Fee 2.70	Certified Fee 2.70
Return Receipt Fee (Endorsement Required) 1.75	Return Receipt Fee (Endorsement Required) 1.75
Postmark Here	Postmark Here
Clerk: KX0X4	Clerk: KX0X4
Total Postage & Fees \$ 4.42	
02/22/05 02/22/05	
Send To: Street, Apt. No. 3991 Page mill Rd. or PO Box No. 22 City, State, Zip 49422 See Reverse for Instructions	
PS Form 3800, June 2002	

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
CERTIFIED MAIL USE	
UNIT ID: 0359	UNIT ID: 0359
Postage \$ 0.37	Postage \$ 0.37
Certified Fee 2.70	Certified Fee 2.70
Return Receipt Fee (Endorsement Required) 1.75	Return Receipt Fee (Endorsement Required) 1.75
Postmark Here	Postmark Here
Clerk: KX0X4	Clerk: KX0X4
Total Postage & Fees \$ 4.42	
02/22/05 02/22/05	
Send To: Street, Apt. No. 3991 Page mill Rd. or PO Box No. 22 City, State, Zip 49422 See Reverse for Instructions	
PS Form 3800, June 2002	

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
CERTIFIED MAIL USE	
UNIT ID: 0359	UNIT ID: 0359
Postage \$ 0.37	Postage \$ 0.37
Certified Fee 2.70	Certified Fee 2.70
Return Receipt Fee (Endorsement Required) 1.75	Return Receipt Fee (Endorsement Required) 1.75
Postmark Here	Postmark Here
Clerk: KX0X4	Clerk: KX0X4
Total Postage & Fees \$ 4.42	
02/22/05 02/22/05	
Send To: Street, Apt. No. 3991 Page mill Rd. or PO Box No. 22 City, State, Zip 49422 See Reverse for Instructions	
PS Form 3800, June 2002	



# Exhibit H

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## Track & Confirm

### Search Results

Label/Receipt Number: 7004 1350 0001 0408 1169

Detailed Results:

- Notice Left, April 11, 2005, 7:59 am, BROOKLYN, NY 11204
- Unclaimed, April 01, 2005, 12:43 pm, LOS ALTOS, CA
- Refused, February 26, 2005, 2:48 pm, LOS ALTOS, CA 94022
- Acceptance, February 22, 2005, 2:58 pm, BROOKLYN, NY 11204

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# Exhibit I

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## Track & Confirm

### Search Results

Label/Receipt Number: 7004 1350 0001 0408 1138

Detailed Results:

- Notice Left, March 04, 2005, 6:16 am, BROOKLYN, NY 11204
- Undeliverable as Addressed, February 25, 2005, 9:48 am, MORGAN HILL, CA 95037
- Acceptance, February 22, 2005, 2:58 pm, BROOKLYN, NY 11204

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# Exhibit J

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## Track & Confirm

### Search Results

Label/Receipt Number: 7004 1350 0001 0408 1121

Detailed Results:

- Sent to Mail Recovery Center, April 14, 2005, 11:25 am, ATLANTA, GA
- Sent to Mail Recovery Center, March 25, 2005, 2:36 pm, BROOKLYN, NY
- Notice Left, March 07, 2005, 3:24 pm, BROOKLYN, NY 11204
- Notice Left, March 05, 2005, 8:55 am, BROOKLYN, NY 11204
- Undeliverable as Addressed, February 25, 2005, 8:37 am, MOUNTAIN VIEW, CA 94043
- Acceptance, February 22, 2005, 2:59 pm, BROOKLYN, NY 11204

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# Exhibit K

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## Track & Confirm

### Search Results

Label/Receipt Number: 7004 1350 0001 0408 1152

Detailed Results:

- Unclaimed, April 07, 2005, 10:47 am, SAN FRANCISCO, CA
- Notice Left, February 28, 2005, 4:02 pm, SAN FRANCISCO, CA 94123
- Acceptance, February 22, 2005, 2:57 pm, BROOKLYN, NY 11204

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# Exhibit L

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## Track & Confirm

### Search Results

Label/Receipt Number: 7004 1350 0001 0408 1145

Detailed Results:

- Delivered, March 14, 2005, 3:43 pm, BROOKLYN, NY 11204
- Notice Left, March 12, 2005, 10:29 am, BROOKLYN, NY 11204
- Acceptance, February 22, 2005, 2:57 pm, BROOKLYN, NY 11204

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# Exhibit N

1 Saul M. Ferster (SB# 45134)  
2 LAW OFFICES OF SAUL M. FERSTER  
3 1390 Market Street, Suite 1204  
4 San Francisco, CA 94102  
5 Telephone: (415) 863-2678  
6 Facsimile: (415) 522-0513  
7  
8 Attorney for Plaintiff  
9 3650 FILLMORE STREET, LLC

**FILED**  
*San Francisco County Superior Court*

SEP 17 2004

**GORDON PARK-LI, Clerk**  
BY: *Victor E. Rodriguez*  
Deputy Clerk

**SUMMONS ISSUED**

10  
11 IN THE SUPERIOR COURT LTD. OF THE STATE OF CALIFORNIA  
12  
13 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

14  
15 3650 FILLMORE STREET, LLC, a California limited liability company, Plaintiff,  
16 v. DAVID W. ROTH and DOES 1-30, inclusive, Defendants.

**CUD-04-611753**  
No.

COMPLAINT FOR UNLAWFUL DETAINER AND FOR DAMAGES TO THE DATE OF FILING IN A SUM LESS THAN \$2,500

17 Plaintiff alleges:

18 1. At all times herein mentioned, Plaintiff, 3650 FILLMORE STREET, LLC, was, and  
19 is now, a limited liability company organized and existing under the laws of the State of California.

20 2. Plaintiff is, and at all times herein mentioned was, the owner of 3650 Fillmore Street,  
21 Apt. 304, San Francisco, California 94123 (hereinafter referred to as "the Premises").

22 3. The true names and capacities, whether individual, corporate, associate,  
23 representative, or otherwise of the Defendants named in this Complaint as DOES 1 through 30,  
24 inclusive, are at this time unknown to Plaintiff who therefore sues these Defendants by their  
25 fictitious names. Plaintiff is informed and believes that said Defendants, and each of them, are the  
26 agents, servants, and employees of each other and of the other Defendants, and that said DOES in  
27 some way or in some manner share responsibility for the wrongs herein complained of. Plaintiff is  
28 further informed and believes and thereon alleges that at all times herein mentioned, and in doing

1 the things herein complained of, each of said DOE Defendants was acting within the scope, purpose,  
2 and authority of his or her said agency, service, and employment and for the benefit and with the  
3 consent and permission of the remaining Defendants. Plaintiff is further informed and believes and  
4 thereon alleges that DOES 1-30 inclusive participated, in some way or manner in the wrongs  
5 complained of both as hereinafter alleged and/or in some manner not yet ascertained, and that DOES  
6 1-30 in some way claim a right to possession of the Premises and claim that a landlord-tenant  
7 relationship exists between them and Plaintiff. Plaintiff will seek leave of the Court to amend this  
8 Complaint to show the true names, capacities, and actions of said DOE Defendants when  
9 ascertained.

10 4. On or about June 28, 1996, Defendant DAVID ROTH and Plaintiff's predecessor in  
11 interest entered into a written lease respecting the Premises. Defendant agreed to lease the Premises  
12 for a period of one year and twenty-six days, commencing on July 6, 1996, at a rent of \$1,650.00  
13 per month, payable monthly on the first day of the month. Upon expiration of the written lease, the  
14 tenancy of Defendant has continued on a month-to-month basis on the same terms and conditions  
15 as under the written lease.

16 5. On or about July 6, 1996, Defendant DAVID ROTH went into possession of the  
17 Premises and said Defendant continues in possession of the same. Plaintiff is informed and believes  
18 and thereupon alleges that on some date unknown prior to the service of the Notice herein,  
19 Defendant DAVID ROTH allowed DOES 1-30 to occupy the Premises, and the same are currently  
20 in possession thereof as unauthorized subtenants.

21 6. At all times herein mentioned, Plaintiff and Plaintiff's agents have performed all  
22 conditions of the written lease.

23 7. On July 16, 2004, Plaintiff caused to be served on Defendants a 60-day Notice  
24 Terminating Defendants' tenancy (hereinafter referred to as the "Notice"). A true copy of the Notice  
25 is attached hereto as Exhibit A and incorporated herein by this reference.

26 8. The Notice was served on said Defendants by posting a copy of the Notice in a  
27 conspicuous place at the Premises on July 16, 2004, and mailing a copy to said Defendants at the  
28 Premises on July 16, 2004, because neither the Defendants nor any person of suitable age or

08-02-05

Docket No. B2745.0025  
#DAD



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Heidi Kay et al.

Application No.: 09/216,206

Confirmation No.: 1079

Filed: December 18, 1998

Group Art Unit: 3622

For: INTERNET ADVETISING SYSTEM

Examiner: James W. Myhre

**CERTIFICATE OF MAILING UNDER 37 CFR § 1.8**

Dear Sir:

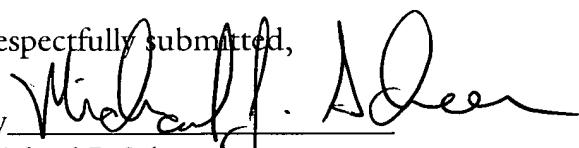
Enclosed herewith are the following correspondences:

- 1) Request for Reconsideration of Petitions under 37 CFR §§ 1.48 and 1.183.
- 2) Statement of Facts in Support of Request for Reconsideration (with Exhibits).
- 3) Declaration for Utility or Design Patent Application.
- 4) Statement by Dylan F. Salisbury under 37 CFR § 1.48.
- 5) Petition for Extension of Time under 37 CFR § 1.36(a).
- 6) Fee Transmittal.
- 7) Credit Card Form
- 8) Postcard

I hereby certify that the above correspondences are being deposited with the United States Postal Service as Express Mail Airbill No. EL 989766736 US in an envelope addressed to:

Dated: August 1, 2005

Respectfully submitted,

By   
Michael J. Scheer

Registration No.: 34,425

DICKSTEIN SHAPIRO MORIN & OSHINSKY  
LLP

1177 Avenue of the Americas  
41st Floor  
New York, New York 10036-2714  
(212) 835-1400  
Attorney for Petitioner

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450